

DEPARTMENT OF LIQUOR CONTROL

COUNTY OF MAUI

Adoption of Chapter 102
Rules Governing Administrative Practices
and Procedures of the Liquor Commission
and Liquor Control Adjudication Board
of the County of Maui

SUMMARY

Chapter 102, entitled "Rules Governing Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui" is adopted.

TITLE MC-08
DEPARTMENT OF LIQUOR CONTROL
SUBTITLE 01
LIQUOR COMMISSION
CHAPTER 102
RULES GOVERNING ADMINISTRATIVE
PRACTICES AND PROCEDURES OF THE
LIQUOR COMMISSION AND
LIQUOR CONTROL ADJUDICATION BOARD
OF THE COUNTY OF MAUI

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SUBCHAPTER 1

GENERAL PROVISIONS

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§08-102-01 Title.

The rules in this chapter shall be known as the "Rules Governing Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui," herein referred to as "Rules of the Commission."

§08-102-02 Authority.

The rules herein are established pursuant to section 8-13.2 of the Charter of the County of Maui and section 281-17, HRS.

§08-102-03 Purpose.

The following rules shall govern the administrative practices and procedures before the department of liquor control of the County of Maui and are promulgated pursuant to the provisions of chapter 91, HRS. It is the intention of the said liquor commission and liquor control adjudication board that the following rules effectuate and carry out the purposes and policies of chapter 91, HRS, as aforesaid and that they shall be construed and interpreted in the manner most favorable to achieve its purpose.

§08-102-04 Construction.

These rules shall be construed to secure the just and efficient determination of matters coming before the liquor commission and the liquor control adjudication board. These rules should be read in conjunction with the provisions of the Charter of the County of Maui, the Hawaii Revised Statutes, and the Maui County Code. In any conflict between provisions herein, the more specific provision shall govern.

§08-102-05 Definition.

Words defined in section 281-1, HRS, shall have the same meaning wherever used herein. Words in the masculine gender signify both the masculine and feminine gender and those in singular or plural number signify both the singular and plural number. Whenever used herein, unless otherwise apparent from the context, the following definitions shall apply:

"Board" means the liquor control adjudication board of the County of Maui.

"Chairperson" means the chairperson of the liquor commission or the liquor control adjudication board of the County of Maui.

"Commission" means the liquor commission of the County of Maui.

"County" means the County of Maui.

"Department" means the department of liquor control of the County of Maui.

"Director" means the director of the department of liquor control of the County of Maui.

"Employee" means any person employed by the department of liquor control including liquor control officers.

"HRS" means the Hawaii Revised Statutes.

"Policy" means the directives concerning the management of the liquor commission adopted by the liquor commission which do not affect the private rights of the general public or procedures available to the general public.

"State" means the State of Hawaii.

\$08-102-06 Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

\$\$08-102-07 to 09 (Reserved)

SUBCHAPTER 2

INFORMATION AND PROCEDURES

§08-102-10	Methods whereby public may obtain information
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§08-102-17	Hearing; illegal manufacture, importation, or sale of liquor
§§08-102-18 to 19	(Reserved)

§08-102-10 Methods whereby public may obtain information.

The public may obtain information as to matters within the jurisdiction of the department by inquiring at:

- (1) The office of the county clerk, where there are on file all rules of the commission; or
- (2) The department:
 - (A) All rules of the commission, or orders and opinions of the department are on file and available for public inspection at said department.
 - (B) Copies of compilations of rules and supplement thereto are available to the public at a price to be fixed by the department to cover mailing and publication costs.
 - (C) Inquiries may be made in person at the department during business hours or by

submitting a request for information in writing.

- (D) Request for copies of any document, record, or information shall be in writing and a fee set by the department, County, or State, shall be assessed for mailing, publication, transcription, copying, and other related costs. All requests shall be reviewed prior to release to ensure compliance with chapter 92, HRS, and any other applicable rules, ordinances, or laws.

§08-102-11 Petition for adoption, amendment or repeal of rules.

(a) Any interested person may petition the commission requesting the adoption, amendment, or repeal of any rule of the rules of the commission.

(b) The petition shall be submitted in thirteen copies and shall include:

- (1) A statement of the nature of the petitioner's interest;
- (2) A draft or the substance of the proposed rule or amendment or a designation of the provision sought to be repealed; and
- (3) An explicit statement of the reasons in support of the proposed rule, amendment, or repeal.

(c) The commission shall within thirty days after the submission of the petition either deny the petition in writing, stating its reasons for such denial, or initiate proceedings in accordance with section 91-3, HRS, for the adoption, amendment, or repeal of the rule as the case may be.

§08-102-12 Declaratory ruling by commission.

(a) Any interested person may petition the commission for a declaratory order as to the applicability of any statute, ordinance, or of any rule of the commission or order of the department.

(b) The petition shall be submitted in thirteen copies and shall contain:

- (1) The name, address, and telephone number of the petitioner;
- (2) A statement of the nature of petitioner's interest, including reasons for the submission of the petition;
- (3) A designation of the specific provision, rule, or order in question;
- (4) A complete statement of facts;
- (5) A statement of the position or contention of the petitioner; and
- (6) A memorandum of authorities, containing a full discussion of the reasons, including any legal authorities, in support of such position or contention.

Any petition which does not conform to the foregoing requirements may be rejected.

(c) The commission may, for good cause, refuse to issue a declaratory ruling. Without limiting the generality of the foregoing, the commission may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts or facts which can reasonably be expected to exist in the near future; or
- (2) The petitioner's interest is not of the type

which would give the petitioner standing to maintain an action if the petitioner were to seek judicial relief; or

- (3) The issuance of the declaratory ruling may adversely affect the interests of the State, County, department, or any of their officers or employees in any litigation which is pending, or may reasonably be expected to arise; or
- (4) The matter is not within the jurisdiction of the commission.

(d) Where any question of law is involved, the commission may refer the matter to the department of the corporation counsel. The commission may also obtain the assistance of other agencies where necessary or desirable.

(e) Upon the disposition of the petition, the petitioner shall be informed in writing thereof by the commission.

(f) Orders disposing of petitions shall have the same status as other commission orders. Orders shall be applicable only to the fact situation alleged in the petition or set forth in the order. They shall not be applicable to different fact situations or where additional facts not considered in the order exist.

§08-102-13 Rules of practice.

(a) Except as otherwise provided by law in any proceeding involving an application for the issuance or transfer of a license by the commission or the revocation or suspension of a license or other disciplinary action by the board or commission, which by law is required to be determined after an opportunity for a hearing, the following shall apply:

- (1) The applicant or licensee shall be notified in writing of the hearing and of the

applicant's or licensee's opportunity to be heard. Such notice shall conform to the requirements of chapters 91 and 281, HRS, and shall be sent not less than two calendar days before the date of the hearing in the case of license applications and not less than five calendar days before the date of the hearing in the case of disciplinary actions. Such notice shall be in addition to any notice by law required to be published in a newspaper.

- (2) The hearing shall be conducted in conformity with the applicable provisions of sections 91-9, 10, 11, and 13, HRS.
- (3) The determination shall be subject to such limitations or standards as may be prescribed by law.
- (4) If the commission or board, as the case may be, decides in favor of the applicant or licensee, the applicant or licensee shall be promptly notified by the commission or by the board rendering such decision.
- (5) If the commission or board decides otherwise, such decision and order accompanied by separate findings of fact and conclusions of law shall be issued. The commission or board, as the case may be, shall within a reasonable time send a certified copy thereof to the applicant or licensee.

(b) Any of the foregoing procedures may be modified or waived by stipulation of the parties and an informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(c) Judicial review shall be as provided by law.

(d) The applicant or any person injured by the commission's decision may file a petition for rehearing or a motion to reconsider a decision made by the

commission or board. For the purpose of this section, a person is injured only if the person participated in the hearing that is the subject of the petition, and also:

- (1) An owner of record of real estate, lessee of record of real estate, or owner of record of shares in a cooperative apartment situated within a distance of five hundred feet from the nearest point of the premises for which the license is asked to the nearest point of such real estate or cooperative apartment; or
- (2) A registered voter residing or situated within a distance of five hundred feet from the nearest point of the premises for which the license is asked.

(e) Such motion or petition shall be filed at the department within fifteen calendar days from the date of the decision. If a person other than the applicant files a petition or motion to reconsider, such petition or motion must be served on the applicant. Motion or petition shall contain, on oath, alleged facts and grounds for consideration which were not formerly presented.

(f) A rehearing may be granted by the commission upon finding that:

- (1) There is newly discovered evidence;
- (2) The evidence was previously undiscovered even though due diligence was exercised;
- (3) The newly discovered evidence is admissible and credible; and
- (4) The evidence must be of such a material and controlling nature as will probably change the outcome and not merely cumulative or tending only to impeach or contradict a witness.

(g) Any protest, petition for rehearing, or motion for reconsideration shall be on the original document and contain the protestor's or petitioner's full legal name, signature, residence address, mailing address, residence telephone number, original signature, and business telephone number. Facsimile or a reproduction of the original document shall not be accepted. The department reserves the right to reject, refuse to accept, or return any document that is incomplete, illegible, or does not meet any requirement(s) of, or not in compliance with any rule of the commission or section of chapter 281, HRS.

§08-102-14 Failure or refusal to comply with order.

(a) The failure or refusal of the licensee to comply with any commission, department, or board order, including an order of license suspension, shall constitute grounds for further disciplinary action, including suspension or revocation of license, imposition of which shall be subject to chapter 91, HRS.

(b) Any licensee who fails to pay any assessment ordered by the board by the due date, shall not exercise its license until such assessment is paid.

§08-102-15 Communications.

All communications to any member of the commission or the board shall be mailed or delivered to:

Department of Liquor Control
c/o Director
County of Maui
Wailuku, Hawaii 96793

§08-102-16 Revocation or suspension of license; hearing.

The commission or board may revoke any license at

any time issued, or suspend the right of the licensee to use the licensee's license, or assess and collect a penalty or reprimand the licensee, either for the violation of any condition of the license or of any provision of chapter 281, HRS, or of any rules of the commission applicable thereto, or upon the conviction in a court of law of the licensee of any violation of this chapter or of any other law relative to the licensee's license or the proper exercise thereof, or of any violation of law in any other respect on account whereof the commission or board may deem the licensee to be an unfit or improper person to hold a license, or for any other cause deemed sufficient by the commission or board.

In every case where the commission or board proposed to revoke or suspend the exercise of any license or assess and collect a penalty for any cause other than a conviction at law of the licensee as above specified, the licensee shall be entitled to notice and hearing in conformity with chapter 91, HRS; the notice to be given at least five days before the hearing, except that any special license shall be subject to summary revocation for any violation of, or evidence of intent to violate, the proper exercise thereof, without hearing before the commission or board.

At the hearing, before final action is taken by the commission or board, the licensee shall be entitled to be heard in person or through counsel and shall be given a full and fair opportunity to present any facts showing that the alleged cause or causes for the proposed action do not exist, or any reasons why no penalty should be imposed. The testimony taken at the hearing shall be under oath and recorded stenographically or by machine, but the parties shall not be bound by the strict rules of evidence; certified copies of any transcript and of any other record made of or at the hearing shall be furnished to the licensee upon the licensee's request and at the licensee's expense.

Any order of revocation, suspension, fine, or reprimand imposed by the commission or board upon the licensee shall be in addition to any penalty that might

be imposed upon the licensee's conviction at law for any violation of this chapter. No licensee shall be subject to both the penalty assessed and collected by the commission or board and to revocation or suspension of license. The amount of penalty assessed and collected for any particular offense shall not exceed the sum of \$2,000.

Whenever the service of an order or notice shall be required by this section, the service shall be made in the following manner: In the case of any violation based upon the personal observation of any investigator, a written notice of the violation shall be given to the licensee or the licensee's employee approved by the director in active charge of the premises, or by serving a certified copy of the notice or order upon the holder of the license wherever the holder may be found in the circuit wherein the holder is licensed or, if the holder cannot be found after diligent search, by leaving a certified copy thereof at the holder's dwelling or usual place of abode with some person of suitable age and discretion residing therein. If the holder of the license cannot be found after diligent search, and service cannot be made, then service may be made by posting a certified copy of the notice or order in a conspicuous place on the licensed premises and depositing another certified copy thereof in the certified mail of the United States post office, postage prepaid, addressed to the holder of the license at the holder's last known residence address; provided that in the case of a partnership, limited liability company, or licensed corporation or unincorporated association, service may be made upon any partner, member, manager, organizer, officer, or director, thereof.

§08-102-17 Hearing; illegal manufacture, importation, or sale of liquor.

The commission or board may assess and collect a penalty or reprimand a person for not having a valid license to manufacture or sell any liquor in violation of chapter 281, HRS, or of any rules of the commission applicable thereto.

In every case where the director elects to conduct proceedings under this section where it is proposed to assess and collect a penalty from a person for not having a valid license to manufacture or sell any liquor in violation of chapter 281, HRS, or of any rules of the commission applicable thereto, the person shall be entitled to notice and hearing in conformity with chapter 281, HRS.

At the hearing, before final action is taken by the commission or board, the person shall be entitled to be heard in person or through counsel and shall be given a full and fair opportunity to present facts showing that the alleged cause or causes for the proposed action do not exist, or any reason why no penalty should be imposed. The testimony taken at the hearing shall be under oath and recorded stenographically or by machine, but the parties shall not be bound by the strict rules of evidence; certified copies of any transcript and of any other record made of or at the hearing shall be furnished to a person upon that person's request and at that person's expense.

Any order, reprimand, or penalty imposed by the commission or board upon a person for not having a valid license to manufacture or sell any liquor in violation of chapter 281, HRS, or of any rules of the commission applicable thereto shall be in addition to any penalty that might be imposed upon that person's conviction in a court of law for any violation of chapter 281, HRS. The amount of penalty assessed and collected by the commission or board from any person under this section for not having a valid license to manufacture or sell any liquor shall not exceed the sum of \$2,000 for each charge.

Whenever the service of an order or notice shall be required by this section, the service shall be made in the following manner: In the case of any violation based upon the personal observation of any investigator, a written notice of the violation shall be given to the person charged with a violation within a reasonable period of time after the alleged violation occurred, the person charged shall be requested to acknowledge receipt

of the alleged violation, or, if the person cannot be found after diligent search, by leaving a certified copy thereof at the person's dwelling or usual place of abode with some person of suitable age and discretion residing therein; and if the person cannot be found after diligent search and service cannot be made, then service may be made by depositing another certified copy thereof in the certified mail of the United States post office, postage prepaid, addressed to the person at the person's last known residence address; provided that in the case of a partnership, limited liability company, corporation or unincorporated association, service may be made upon any partner, member, manager, organizer, officer, or director thereof.

§§08-102-18 to 19 (Reserved)

SUBCHAPTER 3

LIQUOR COMMISSION

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§08-102-31	Voting
§08-102-32	(Reserved)
§08-102-33	Disqualification of commission member
§08-102-34	Ex parte communications
§08-102-35	Individual representing party
§08-102-36	Appointment of the director
§08-102-37	Commission inquiry
§§08-102-38 to 49	(Reserved)

§08-102-20 Liquor commission; authority.

The commission is established in accordance with the provisions of chapter 281, HRS, and chapter 13 of the Charter of the County of Maui. The commission shall have the sole jurisdiction, power, authority, and discretion subject to the rules of the commission and chapters 281 and 245, HRS.

§08-102-21 Organization.

There shall be a commission consisting of nine members who shall be appointed by the mayor and approved by the county council in the manner prescribed in section 8-13.2 of the Charter of the County of Maui.

The commission shall:

- (1) Adopt rules and regulations having the force and effect of law for the administration of liquor control in the County, incorporate and carry out provisions of the liquor control laws of the State.
- (2) Grant, renew or refuse applications for licenses for the manufacture, importation and sale of liquor in the County under applicable laws and regulations.
- (3) Have such other powers and duties as may be provided by law, not in conflict with the provisions of section 8-13.2 of the Charter of the County of Maui.

§08-102-22 Election of chairperson and vice chairperson; recommendation to remove member.

(a) The commission members shall elect annually in the month of March, a chairperson and a vice chairperson to serve for the ensuing year or until a successor shall be elected. In the absence of the chairperson at any meeting, the vice chairperson shall preside over the meeting. In the absence of both the chairperson and vice chairperson, the most senior member will preside.

(b) The commission may recommend to the mayor and the county council the removal of any commission member who has three unexcused absences, or a total of four absences, from any of the regular scheduled meetings in any County fiscal year. Excused absence shall be determined by the chairperson of the commission at each regular meeting.

§08-102-23 Transaction of business.

A majority of the commission shall constitute a quorum for the transaction of business. The concurring vote of the majority of the members shall be necessary

to take any action, provided, that the action to be taken by the commission to validate the appointment or removal of the director shall be as provided by law.

§08-102-24 Commission meetings.

(a) The commission shall conduct its meetings, hearings, or workshops at specified dates, times, and places as set by the commission. Special meetings may be called by the chairperson pursuant to chapter 92, HRS. All hearings shall be conducted pursuant to chapter 92, HRS, and the rules of the commission. Unless otherwise provided by the rules of the commission, all meetings shall be conducted according to Robert's Rules of Order, revised. Regular meetings shall be held in a public place announced in advance; provided, however, that the date, time, and/or place may be changed for the convenience of the public if announced at a regular meeting.

(b) A record shall be made of all oral testimony taken at the hearing in accordance to section 92-9, HRS. Testimony taken at the hearing may be electronically recorded by video or audio tape. The cost of transcribing the electronic recording shall be paid by the requesting party, unless otherwise provided.

(c) All pages of the commission hearing minutes shall be numbered by calendar year.

(d) Unless otherwise provided by the rules of the commission or chapter 92, HRS, all meetings shall be open to the public.

§08-102-25 Policies.

The commission shall adopt policies necessary for the conduct of its affairs.

§08-102-26 Powers in conducting hearings.

(a) Unless otherwise provided by law, the commission shall have the power:

- (1) To hold hearings and issue notices;
- (2) To administer oaths and affirmations;
- (3) To consolidate or sever proceedings, provided that those actions shall be conducive to the ends of justice and shall not unduly delay the proceedings or hinder, harass, or prejudice any party;
- (4) To issue subpoenas;
- (5) To examine witnesses;
- (6) To rule upon officers of proof, to receive relevant evidence, and to exclude evidence which is irrelevant, immaterial, unduly repetitious or cumulative and accordingly, may restrict lines of questioning or testimony;
- (7) To regulate the course and conduct of the hearing;
- (8) To regulate the manner of any examination so as to prevent the needless and unreasonable harassment, intimidation, or embarrassment of any witness or party at the hearing;
- (9) To remove disruptive individuals, including any party, legal counsel, witness, or observer;
- (10) To rule on motions and dispose of procedural matters;
- (11) To dispose of any other matter that normally and properly arises in the course of the proceedings and to take any action authorized

by these rules, chapters 91 and 281, HRS, or any other related laws; and

- (12) To examine, after notice to all parties, any site or tangible evidence relevant to the proceeding.

(b) In the event of the licensee's or applicant's failure to appear before the commission, after proper notice has been served upon the licensee or applicant, or when the licensee or its representative leaves the hearing while the hearing is in progress, the commission may proceed with such hearing without the presence of the licensee or applicant. Failure of the licensee or the licensee's representative or the applicant, or the applicant's representative to appear before the commission after proper notice has been served, or when a licensee or its representative, or the applicant or the applicant's representative leaves while the hearing is in progress, shall constitute the licensee or the applicant waiving its right to be entitled to be heard in person or through counsel and the waiving of the licensee's or applicant's right to a full and fair opportunity to present any facts showing that the alleged cause or causes for the proposed action do not exist, or any reasons why no penalty should be imposed.

(c) If a witness fails to appear before the commission to testify pursuant to subpoena, the commission may continue the hearing and request a contempt of court citation be issued by the circuit court to compel such witness to appear before the commission.

§08-102-27 Agenda and agenda items.

(a) The commission's agenda shall be posted as required under chapter 92, HRS. The agenda shall consist of the following items:

- (1) Date and time of meeting;
- (2) Place of meeting;

- (3) Approval of agenda;
- (4) Approval of minutes of previous meeting;
- (5) General licensing matters. (For confirmation - temporary, transient vessel, special, cancellation, change in officers and directors);
- (6) Other licensing matters;
- (7) Licensing:
 - (A) Public hearings - new licenses, change in category and transfers;
 - (B) Preliminary hearings - new licenses and transfers;
- (8) Communications;
- (9) Administrative affairs;
- (10) Adjournment;
- (11) Date and time for the next regular meeting;
and
- (12) Notice for those that may require special needs or required accommodation.

(b) Licensing. There shall be not more than fifteen agenda items for preliminary and public hearing on licensing.

(c) The commission shall maintain a list of names and addresses of persons who request notification of meetings and shall mail or send by facsimile a copy of the notice to such person at their last recorded address or facsimile number no later than the time the agenda is filed at the office of the county clerk. The list of names and addresses or facsimile numbers of persons who request notification of meetings shall be valid only for the calendar year of the request received. Notification

for renewal shall be mailed or facsimiled in November to all persons on the existing list.

§08-102-28 Informal hearing.

(a) The commission may, in its discretion, on its own motion or upon a petition filed with the commission, hold an informal hearing on matters within its jurisdiction. The petition need not be in any special form but shall, where applicable, include:

- (1) Nature of the petitioner's interest and the reasons for requesting an informal hearing;
- (2) A complete statement of the relevant facts;
- (3) Petition of contention of the petitioner; and
- (4) Name, address, and telephone number of petitioner.

(b) In an informal hearing, the commission shall determine the manner and procedure in which the hearing shall be conducted.

§08-102-29 Formal hearing.

(a) A formal hearing shall be conducted upon motion by the commission, or in a contested case.

(b) If the commission determines to hold a formal hearing, the commission shall notify the parties of the hearing. The notice shall include, where applicable, a statement of:

- (1) The date, time, place and nature of hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The particular sections of the statutes and rules involved;

- (4) An explicit statement of the issues involved and the facts alleged in support thereof, provided that if such issues and facts cannot be stated in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter, upon application, a bill of particulars shall be furnished; and
 - (5) The fact that any party shall have an opportunity to be heard and may retain counsel if the party desires.
- (c) In a formal hearing, the following shall apply:
- (1) The commission shall determine the order in which the parties to the proceeding shall present their case to the commission;
 - (2) Opportunity shall be afforded all parties to present arguments and witnesses on all issues involved;
 - (3) Every party to the proceeding shall have the right to conduct cross-examination as may be required for a full and true disclosure of facts and shall have the right to submit rebuttal evidence;
 - (4) Any oral or documentary evidence may be received by the commission and the strict rules of evidence shall not be applicable, however, irrelevant, immaterial or unduly repetitious evidence shall be excluded;
 - (5) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available, provided upon request, parties shall be given an opportunity to compare the copy with the original;

(6) The commission shall give effect to the rules of privilege recognized by law; and

(7) The commission may take notice of judicially recognizable facts. In addition, the commission may take notice of generally recognized technical or scientific facts within its knowledge; but parties to the proceeding shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

(d) Every final decision and order, rendered by the commission after a formal hearing is held, shall be in writing and shall be accompanied by separate findings of fact and conclusions of law. The commission shall send a certified copy thereof to each of the parties to the proceedings.

(e) Any persons aggrieved by the final decision and order rendered by the commission in a contested case may seek other means of review, redress, relief, including the right to appeal, or any other avenues as provided by law.

§08-102-30 Presentation of oral or written testimony on agenda items.

(a) All interested persons shall be allowed to submit data, views or argument, orally or in writing on any agenda item before the commission.

(b) Persons interested in presenting oral testimony on any agenda item of the commission shall be subject to the following conditions to be enforced by the commission:

(1) Person must be recognized by the chairperson of the commission prior to presenting oral testimony;

- (2) Person must state the person's full legal name and address prior to presenting oral testimony;
- (3) Person shall address all testimony to the commission only; and
- (4) Initially, two minutes will be granted on an agenda item, and at the discretion of the commission chairperson, an additional minute may be granted to conclude the testimony. If unable to do so, an additional two minutes will be granted after all others desiring to speak have been heard.

(c) Persons interested in presenting written testimony of any agenda item of the commission shall submit the signed written testimony at or prior to the time of the hearing. Any written testimony that is unsigned or contains a signature that is illegible and the identity of the writer of the written testimony cannot be determined shall not be considered.

§08-102-31 Voting.

(a) Except as otherwise provided by law, all matters shall be determined by an affirmative vote of a majority of the membership to which the commission is entitled. If the commission is unable to approve, deny, or render a decision on any item and no other motions regarding the matter are passed, the matter shall be considered to be denied.

(b) Whenever the commission is ready to vote on any question, the chairperson shall state the question, put the question to vote, and announce the results to the commission.

(c) Unless a commission member states that the member is disqualified or excused from voting pursuant to section 08-102-33 of the rules of the commission, the member's silence or refusal to vote shall be recorded as an affirmative vote.

(d) The commission or its designee shall state its decision at the public hearing or if required by chapters 91 and 92, HRS, render a written decision within a reasonable time.

§08-102-32 (Reserved)

§08-102-33 Disqualification of commission member.

No commission member shall participate in the discussion or vote on any matter in which the commission member:

- (1) Has any direct or indirect financial interest that would prevent the commission member from making an objective decision on the matter being heard; or
- (2) Has participated in any investigation of the matter and has not fully disclosed the member's investigation to the commission.

§08-102-34 Ex parte communications.

On any matter before the commission:

- (1) No person, either in private or public life, shall communicate privately on the merits of any application or case with any commission member or the commission's staff unless specifically provided for by law;
- (2) No commission member's staff or any other government agency who participates in the proceeding as a witness or counsel shall communicate privately on the merits of any application or case with any commission member unless specifically provided by law;
- (3) No commission member shall communicate with any person or investigate privately on the

merits of any application or case unless specifically provided by law; and

- (4) If a commission member has engaged in improper communication as specified herein, the commission member must fully disclose the improper communication and afford the parties and commission members the opportunity to rebut, present evidence and argument to the improper communication.

§08-102-35 Individual representing party.

When an individual, acting in a representative capacity on behalf of an applicant or licensee, appears in a proceeding or signs a document submitted to the commission, that personal appearance or signature shall constitute a representation that the individual is lawfully authorized and qualified to so act. The commission shall require the individual to furnish proof of authorization and qualification to act in such capacity.

§08-102-36 Appointment of the director.

Upon a vacancy in the office of the director, the commission shall appoint a qualified replacement. The selection process shall be as follows:

- (1) Notice of the vacancy or impending vacancy and the intent of the commission to fill such vacancy shall be circulated throughout the department and published at least once in a newspaper of general circulation in the State. The notice shall list the requirements for such office and shall summarize the selection procedures contained herein.
- (2) The commission shall, by motion, adopt an application form to be used by prospective candidates. Each candidate, at the candidate's option, may supplement such

application form with additional resumes and information.

- (3) The commission shall set a deadline for receipt by the department of applications by interested candidates, which deadline shall be no sooner than thirty calendar days nor later than sixty calendar days after the publication of notice provided for in subsection (1) above.
- (4) Upon receipt of all applications, the commission shall meet to consider the applications and, if the commission desires to, invite other applicants for the position. Unless otherwise required by law, such interviews shall be closed to the public.
- (5) Pursuant to chapter 92, HRS, the commission may meet in a closed session to deliberate the selection of a person to fill the vacancy. Nothing contained herein shall prevent the commission from waiving the selection process or choosing a person to fill the vacancy who has not filed an application. The selection of the new director shall be by majority vote of the entire commission.

§08-102-37 Commission inquiry.

The commission and its members shall not inquire into any area or matter that is not within the jurisdiction of the commission.

§§08-102-38 to 49 (Reserved)

SUBCHAPTER 4

DIRECTOR OF LIQUOR CONTROL

§08-102-50	Administration and duties
§08-102-51	Complaint against the director
§08-102-52	Filing of complaint
§08-102-53	Withdrawal of complaint
§08-102-54	Processing complaint
§08-102-55	Informing parties of complaint
§08-102-56	Review of investigation
§08-102-57	Hearing on complaint brought by the public, licensee, or applicant
§08-102-58	Hearing procedure
§08-102-59	Disposition of complaint
§§08-102-60 to 69	(Reserved)

§08-102-50 Administration and duties.

(a) The director reserves and retains, solely and exclusively, all management rights, powers and authority, including the right of management to manage, control and direct its work forces and operations.

(b) The director's duties and responsibilities shall be and not limited to the following:

- (1) Hire, discipline or remove any employee as its business may from time to time require, to prescribe their duties and fix their compensation; to engage services of experts and persons engaged in the practice of a profession, if deemed expedient.
- (2) Issue departmental orders describing in detail the operational procedures of the department, the general rules of conduct to be observed by all employees of the department and outline a guide for disciplinary actions. Each employee shall be furnished with a copy of such departmental orders.

- (3) Have jurisdiction and discretion of the operation and activities of the department.
- (4) Issue personnel orders designating appointments, promotions, demotions, suspensions and assignments made by the director. Copies of the personnel orders shall be included in the director's monthly report to the commission at its next regular scheduled meeting.
- (5) Provide for training of employees in accordance with County standards and for continued training of employees.
- (6) Attend meetings of the commission and shall submit to the commission a monthly report of the activities of the department.
- (7) Keep the commission informed of future plans and make recommendations for the continued improvement of the department's services to the community.
- (8) Prepare and submit to the commission a budget for the department.
- (9) Perform all other duties required under the Charter of the County of Maui, Maui County Code, and State laws.

§08-102-51 Complaint against the director.

(a) It is the intent of this section that the director be disciplined or dismissed only for cause and not arbitrarily or capriciously. Grounds for discipline or dismissal of the director shall include, but not be limited to, the following:

- (1) Malfeasance, misfeasance or nonfeasance in office;
- (2) Falsification of candidate's application.

(b) The commission may institute disciplinary proceedings against the director upon motion of any commission member and a majority vote in favor therefor. Any proceedings pertaining to charges brought against the director shall be considered a contested case and be conducted in accordance with section 08-102-29 of the rules of the commission, except that all such proceedings shall be closed to the public unless otherwise requested by the director.

(c) The commission may sustain the allegations of any charge against the director by a majority vote and may take any of the following actions:

- (1) Reprimand the director;
- (2) Suspend the director for a period of time determined by the commission;
- (3) Dismiss the director.

§08-102-52 Filing of complaint.

A charge, herein called a complaint against the conduct of the director, shall be in writing and sworn to by the complainant. Any member of the public may file, in person or by mail, a complaint with the director. Complainant shall include the date, time, place, and the alleged misconduct, the alleged responsible party's name, complainant's name and address, and facts surrounding the alleged misconduct in the complaint. Complaints may be made upon forms prescribed by the commission.

§08-102-53 Withdrawal of complaint.

A complaint may be withdrawn by written notice of withdrawal, signed and dated by the complainant, which notice may be made on forms prescribed by the commission.

§08-102-54 Processing complaint.

(a) All complaints filed shall be immediately forwarded to the chairperson of the commission who shall assign each complaint a file number and shall refer the complaint for investigation to:

- (1) The prosecuting attorney, should the complaint be criminal in nature;
- (2) The corporation counsel, should the complaint be ethical or procedural in nature;
with instruction to submit a report thereon, however, no complaint shall be referred for investigation or processed where:

- (A) The complaint is not filed within thirty days of the occurrence of the event which is the basis of the complaint; or
- (B) The complaint, on its face, is speculative, hypothetical or not based on factual circumstances; or
- (C) The identical allegations of the complaint are being or will soon be litigated in a criminal action or the complaint is being or will soon be litigated in a civil action or the complainant has given notice of his intention to seek his remedies in a civil suit; or
- (D) The subject matter of the complaint is not within the jurisdiction of the commission; or
- (E) The complainant's interest is not of the type which would give him standing to maintain an action in a court of law and the complainant is not an eyewitness to the events which are the basis of the complaint. (Complaints where the complainant has standing or is an

eyewitness will be processed.)

(b) Whenever the complaint is not processed for any of the reasons above, the commission shall review the decision of the chairperson at its next meeting. The commission may for good cause, waive any of the bars to processing complaints and may sustain or reverse the original decision by a majority vote. Where the commission decides that the complaint should not be processed, it shall inform the complainant of its decision in writing, giving its reasons therefor and where applicable, inform the complainant of alternative remedies. Except for good cause, appearing on the record, the commission shall not defer or postpone the processing of complaints for more than thirty days.

§08-102-55 Informing parties of complaint.

(a) The director and the complainant shall be informed that the complaint has been referred for investigation as soon as possible. The director shall also be given a copy of the written complaint and be informed of the nature of the investigation to be considered.

(b) The director shall be served with such notices to the address listed in the director's personnel file by certified or registered mail, addressee only, return receipt requested, or by hand delivery, or as otherwise provided by law or rule of court for service of legal documents. Written confirmation of service in the form of the signed receipt or affidavit of hand delivery shall be filed with the commission prior to the commencement of any hearing on the complaint.

(c) The commission, by majority vote, may place the director on administrative leave with pay while any investigation is being conducted.

§08-102-56 Review of investigation.

(a) The investigating agency shall prepare a

detailed investigation report and submit said report to the commission when the investigation is completed.

(b) The commission shall review the investigation report in closed session. The commission may then:

- (1) Request further investigation by the investigating agency; or
- (2) Determine that the findings contained in the report are sufficient for the commission to take final action without a hearing; or
- (3) Determine that the commission requires a hearing to supplement or clarify the findings of the report.

§08-102-57 Hearing on complaint brought by the public, licensee, or applicant.

(a) Any member of the public, licensee or applicant may file a complaint before the commission on any matter within the commission's jurisdiction.

(b) Upon the commission's determination that a complaint was not filed for an improper purpose, such as to harass, intimidate, ridicule, or cause unnecessary delay, the commission may:

- (1) Set the place, date, and time of the hearing to be had; or
- (2) Recommend that the director investigate the matter and issue preliminary findings.

(c) If the subject of the complaint involves an ongoing civil litigation, criminal investigation, or an investigation by the department, or other governmental agency, the commission may schedule the hearing after the completion of the civil litigation or investigation.

(d) Upon the determination that a complaint was brought for an improper purpose, such as to harass,

intimidate, ridicule, or cause unnecessary delay, or was filed without reasonable inquiry into the facts, the commission may impose upon the person or entity who brought the complaint, an appropriate sanction.

§08-102-58 Hearing procedure.

Hearing on complaints filed pursuant to section 08-102-57 of the rules of the commission, shall be in accordance with the following procedure:

- (1) The commission shall call all witnesses including the complainant and the accused to testify on issues before the commission;
- (2) The commission may request its counsel to examine all witnesses and each commission member may in turn examine all witnesses subject to the recognition of the chairperson;
- (3) Any oral or documentary evidence may be received by the commission and the strict rules of evidence shall not be applicable, however, irrelevant, immaterial, or unduly repetitious evidence shall be excluded;
- (4) The commission shall give effect to the rules of privilege recognized by law;
- (5) Any witness, including the complainant and the accused, may be accompanied and be advised by counsel;
- (6) The commission may take notice of judicially recognizable facts; and
- (7) The hearing may be electronically recorded.

§08-102-59 Disposition of complaint.

- (a) After a hearing or upon review of the

investigation report, the commission shall make findings of fact and conclusions. Said findings of fact and conclusions shall be ratified in open session without disclosing the names of the complainant or the accused.

(b) The commission may find that:

- (1) The complaint was not based on facts, or the alleged incident did not occur and the complaint is unfounded; or
- (2) There is insufficient evidence to prove the material allegations of the complaint and the complaint is therefore not sustained; or
- (3) The incident complained of occurred, but the act or conduct of the department or employee was lawful and proper and the accused is exonerated; or
- (4) There is sufficient evidence to support the allegation of the complaint and grounds to justify a recommendation that remedial action be taken.

(c) The commission shall make written findings of fact and conclusions of each complaint and shall transmit a copy thereof to the director. Where the commission finds that remedial action should be taken, a written order as to such action shall be made to the director. The complainant shall in each case be notified in writing of the commission's final disposition.

§§08-102-60 to 69 (Reserved)

SUBCHAPTER 5

COMPLAINTS

§08-102-70 Charges against department employees
§08-102-71 Charges against commission or board members
§08-102-72 Complaints register and records
§§08-102-73 to 79 (Reserved)

§08-102-70 Charges against department employees.

(a) It is the intent of this section, that the investigation of any personnel matter or charges against any employee of the department shall be investigated in a fair and equitable manner that will be above reproach.

(b) All charges or complaints of any personnel matter or against any department employee shall be referred to the director for investigation and disposition.

(c) Any member of the public may file, in person or by mail, a complaint against any employee of the department. The complaint shall be in writing and sworn to by the complainant. Complainant shall include the date, time, place, and the alleged misconduct, the alleged responsible party's name, complainant's name and address, and facts surrounding the alleged misconduct.

(d) The director may refer the complaint for investigation to:

- (1) The prosecuting attorney, should the complaint be criminal in nature;
- (2) The corporation counsel and director of personnel services, should the complaint be ethical or procedural in nature; violation of departmental orders or the like; with instruction to submit a report thereon, however, no complaint shall be referred for investigation or processed where:

- (A) The complaint is not filed within thirty days of the occurrence of the event which is the basis of the complaint; or
- (B) The complaint, on its face, is speculative, hypothetical or not based on factual circumstances; or
- (C) The identical allegations of the complaint are being or will soon be litigated in a criminal action or the complaint is being or will soon be litigated in a civil action or the complainant has given notice of the complainant's intention to seek remedies in a civil suit; or
- (D) The subject matter of the complaint is not within the jurisdiction of the department; or
- (E) The complainant's interest is not of the type which would provide the complainant standing to maintain an action in a court of law and the complainant is not an eyewitness to the events which are the basis of the complaint. (Complaints where the complainant has standing or is an eyewitness will be processed).

(e) Whenever the complaint is not processed for any of the reasons above, the director, shall in writing, attach such reasons to the complaint. The complainant shall be informed and be provided a copy of the reason the complaint was not processed.

(f) The director shall be responsible for the review, disposition and disciplinary action (if any) of all personnel matters or complaints brought forth against any employee of the department, subject to any rules and regulations of any civil service, departmental orders or other applicable personnel regulations.

§08-102-71 Charges against commission or board members.

Any charges herein called complaints or inquiries of the conduct against the commission or the board members shall be documented and forwarded to:

- (1) Mayor;
- (2) Board of ethics;
- (3) Corporation counsel;
- (4) Prosecuting attorney, if applicable, for investigation and disposition.

§08-102-72 Complaints register and records.

(a) The commission shall maintain a central register for recording actions taken on each complaint. The central register shall contain the following information:

- (1) File number of complaint;
- (2) Date complaint filed;
- (3) Brief description of the subject matter of the complaint;
- (4) Date of review of investigative report by the commission;
- (5) Date of hearing before commission, if any;
- (6) Date of final disposition by the commission; and
- (7) Type or nature of final disposition by the commission.

(b) The central register shall not contain the names of the complainant or the accused employee and

shall be made available for public inspection during office hours.

(c) The files of all complaints including investigative reports shall be kept confidential unless released by the accused person. All files of complaints which were found to be not sustained, unfounded or exonerated may be automatically expunged and destroyed after a period of six months after such decision is rendered.

§§08-102-73 to 79 (Reserved)

SUBCHAPTER 6

LIQUOR CONTROL ADJUDICATION BOARD

§08-102-80	Organization
§08-102-81	Election of chairperson and vice chairperson; recommendation to remove member
§08-102-82	Transaction of business
§08-102-83	Board meetings
§08-102-84	Policies
§08-102-85	Powers in conducting hearings
§08-102-86	Complaint and accusations; notice of hearing; subpoenas
§08-102-87	Pre-hearing conference
§08-102-88	Testimony and record; adjudication hearings
§08-102-89	Pleading; adjudication hearings
§08-102-90	Evidence; adjudication hearings
§08-102-91	Disclosure; adjudication hearings
§08-102-92	Procedures; adjudication hearings
§08-102-93	Factors to be considered in imposing penalties
§08-102-94	Findings of fact, conclusions of law, decision and order
§08-102-95	Reconsideration of decision and order; adjudication hearings
§08-102-96	Surrender of license upon suspension, revocation, or closing of business
§08-102-97	Appeals; record
§08-102-98	Ex parte communications
§08-102-99	Disqualification of board member
§§08-102-100 to 109	(Reserved)

§08-102-80 Organization.

There shall be a board consisting of nine members who shall be appointed by the mayor and approved by the county council in the manner prescribed in section 8-13.3 of the Charter of the County. The board:

- (1) Shall hear and determine administrative complaints of the director regarding

violations of the liquor laws of the State or of the rules of the commission, and impose penalties for violations thereof as may be provided by law.

- (2) Have such other powers and duties as may be provided by law, not in conflict with the provisions of section 8-13.3 of the Charter of the County.

§08-102-81 Election of chairperson and vice chairperson; recommendation to remove member.

(a) The board members shall elect annually, in the month of March, a chairperson and a vice chairperson to serve for the ensuing year or until a successor shall be elected. In the absence of the chairperson at any meeting, the vice chairperson shall preside over the meeting. In the absence of both the chairperson and vice chairperson, the most senior member will preside.

(b) The board may recommend to the mayor and the county council the removal of any board member who has three unexcused absences, or a total of four absences, from any of the regular scheduled meetings in any County fiscal year. Excused absence shall be determined by the chairperson at each regular meeting.

§08-102-82 Transaction of business.

A majority of the board shall constitute a quorum for the transaction of business. The concurring vote of the majority of the members shall be necessary to take any action.

- (1) If the board is unable to render a decision on any complaint heard before the board, and no other motion regarding the matter is passed, the complaint shall be considered dismissed.
- (2) Whenever the board is ready to vote on any

question, the chairperson shall state the question, put the question to vote, and announce the results to the board.

- (3) Unless a present board member states that the board member is disqualified or excused from voting pursuant to sections 08-102-98 and/or 08-102-99 of the rules of the commission, the board member's silence or refusal to vote shall be recorded as an affirmative vote.
- (4) The board or its designee shall render a written decision within a reasonable time from the date of the public hearing.

§08-102-83 Board meetings.

(a) The board shall conduct its meetings, hearings, or workshops at specific dates, times, and places as set by the board. Special meetings may be called by the chairperson pursuant to chapter 92, HRS. All hearings shall be conducted pursuant to chapters 91 and 92, HRS and these rules. All meetings shall be conducted according to Robert's Rules of Order, revised. If there is a conflict between the provisions herein and Robert's Rules of Order, revised, the provisions herein shall apply. Regular meetings shall be held in a public place announced in advance; provided, however, that the date, time and/or place may be changed for the convenience of the public if announced at a regular meeting.

(b) Unless otherwise provided for by these rules or chapter 92, HRS, all meetings shall be open to the public.

§08-102-84 Policies.

The board shall adopt policies necessary for the conduct of its affair.

§08-102-85 Powers in conducting hearings. Unless otherwise provided by law, the board shall have the power:

- (1) To hold hearings and issue notices;
- (2) To administer oaths and affirmations;
- (3) To consolidate or sever proceedings, provided that those actions shall be conducive to the ends of justice and shall not unduly delay the proceedings or hinder, harass, or prejudice any party;
- (4) To issue subpoenas;
- (5) To examine witnesses;
- (6) To rule upon officers of proof, to receive relevant evidence, and to exclude evidence which is irrelevant, immaterial, unduly repetitious or cumulative and accordingly, may restrict lines of questioning or testimony;
- (7) To regulate the course and conduct of the hearing;
- (8) To regulate the manner of any examination so as to prevent the needless and unreasonable harassment, intimidation, or embarrassment of any witness or party at the hearing;
- (9) To remove disruptive individuals, including any party, legal counsel, witness, or observer;
- (10) To rule on motions and dispose of procedural matters;
- (11) To dispose of any other matter that normally and properly arises in the course of the proceedings and to take any action authorized by these rules, chapters 91 and 281, HRS, or

any other related laws; and

- (12) To examine, after notice to all parties, any site or tangible evidence relevant to the proceeding.

§08-102-86 Complaint and accusations; notice of hearings; subpoenas.

(a) Where it is proposed to revoke or suspend a license, assess and collect a penalty, or reprimand a licensee for a violation of law or of these rules, the director shall:

- (1) Issue a complaint and accusation informing the licensee of the charge(s);
- (2) Schedule a hearing before the board and issue a notice of hearing at least five calendar days before the date of the hearing, informing the licensee of the date, time, and place of the hearing.

(b) Subpoenas may be issued by the director or designee. Compliance with the subpoenas shall be enforced in the courts.

§08-102-87 Pre-hearing conference.

(a) The board may order that a pre-hearing conference be conducted and attended by all parties to an adjudication hearing. At the pre-hearing conference, the board may require all parties to disclose to the other parties any information which may be requested.

(b) If no pre-hearing conference is held, the board may require each party to an adjudication hearing to submit a statement disclosing and identifying all witnesses to be called at the adjudication hearing, and all exhibits to be used at the adjudication hearing. A copy of the statement shall be served upon all other parties to the proceeding. The board may require other

relief in order to simplify the issues and facilitate the orderly progress of the adjudication hearing.

§08-102-88 Testimony and record; adjudication hearings.

(a) All witnesses testifying at an adjudication hearing shall be administered an oath prior to their testimony. The board's chairperson or designee shall administer the oath.

(b) A record shall be made of all oral testimony taken at the hearing. Testimony taken at the hearing may be electronically recorded by video or audio tape. The cost incurred for preparation of the record and/or of transcribing the electronic recording shall be paid by the requesting party, unless otherwise provided. Pages of the board's minutes of the hearing shall be numbered by calendar year.

(c) Unless otherwise provided by law, the record shall consist of the following:

- (1) All pleadings, motions, and intermediate rulings;
- (2) All evidence received or considered, including without limitation, oral testimony, exhibits, and matters officially noted by the board;
- (3) All offers of proof and rulings thereon; and
- (4) All proposed findings and exceptions.

§08-102-89 Pleading; adjudication hearing.

(a) The first page of every pleading in an adjudication hearing shall set forth the name and address of the party, the title of the particular pleading, the name of the proceeding and case number, if any.

(b) All pleadings in an adjudication hearing shall be signed in black or other photo-reproducible ink by the party filing the pleading or by the party's authorized agent. The signature shall constitute certification that the person signing has read the pleading and that to the best of the person's knowledge, information and belief, the pleading is true and correct and is not submitted for the purpose of hindering, harassing or delaying any party or proceeding.

(c) Unless otherwise provided, all pleadings, motions, memorandas, and other documents shall be filed with the board.

§08-102-90 Evidence; adjudication hearings.

(a) The admissibility of evidence at an adjudication hearing shall not be governed by the laws of evidence and all relevant oral or documentary evidence shall be admitted. Irrelevant, immaterial, or unduly repetitious material shall not be admitted into evidence. The board shall give effect to the privileges recognized by law.

(b) Documentary evidence may be received in the form of copies, provided that, upon request, all other parties to the proceeding shall be given an opportunity to compare the copy with the original. If the original is not available, a copy may still be admissible, but the non-availability of the original and the reasons therefore may be considered by the board when considering the weight of the documentary evidence.

(c) The board may take notice of judicially recognizable facts and of generally recognized technical or scientific facts. The parties, whenever possible, shall be notified before the hearing of the material to be so noticed and shall be afforded an opportunity to contest the facts so noticed.

(d) Except as otherwise provided by law, the burden of proof, including the burden of producing the evidence and burden of persuasion, shall be upon the

party initiating the proceeding. Proof of a matter shall be preponderance of the evidence.

§08-102-91 Disclosure; adjudication hearing.

(a) Any party to an adjudication hearing may, by written demand, timely filed with the board, and served upon any other party, request of any other party to the proceeding, the full disclosure of:

- (1) The identity of all witnesses to be called by the other party, unless prohibited by law;
- (2) The identity of all persons known by the other party to have material knowledge relevant to the proceeding; and
- (3) All exhibits, including, but not limited to documents, photographs, and other tangible evidence to be introduced by the other party at the adjudication hearing. The requesting party shall have the right to examine the exhibits and make copies thereof.

(b) In order to be admitted at the adjudication hearing, a copy of an investigation report shall be provided to all parties not later than seven days before such hearing. If a copy of the investigation report is not provided to all parties, the report shall not be permitted to be introduced at the adjudication hearing.

(c) All demands for disclosure shall continue in effect for the duration of the proceeding and the party to whom the demand is directed shall be under a continuing duty to disclose the information requested as and when it becomes available.

(d) The information requested shall be disclosed to the requesting party at the pre-hearing conference or at least seven days before the adjudication hearing, whichever occurs first. The failure to comply with disclosure requirements may result in the evidence subject to the disclosure request not being permitted to

be introduced at the adjudication hearing.

§08-102-92 Procedures; adjudication hearings.

Unless otherwise stipulated by the parties, all adjudication hearings shall proceed as follows:

- (1) The licensee who has been notified to appear before the board shall enter a plea admitting or denying the allegations contained in the complaint and accusation.
- (2) If the licensee pleads "guilty" or "no contest" to the allegations contained in the complaint and accusation, the board shall determine what action, if any, should be taken against the licensee. The director and licensee shall be provided the opportunity to make narrative statements for the board to consider in determining what action, if any, should be taken against the licensee. Unless the board determines otherwise, the director or licensee shall not present any witnesses upon the plea of "guilty" or "no contest."
- (3) If the licensee denies the allegations contained in the complaint and accusation, the parties shall have the opportunity to present any facts tending to prove or disprove the allegations contained in the complaint and accusation. The Board shall invoke the witness exclusionary rule.
 - (A) The parties shall have the opportunity to make an opening statement before any evidence is presented, unless they waive the opportunity. The opening statement shall be heard in the following order:
 - (i) The director's opening statement;
 - (ii) Licensee's opening statement, unless licensee chooses to reserve same

until after presentation of the
director's evidence;

- (B) The director's evidence shall be presented first, and shall be followed by the presentation of evidence in support of licensee's case;
 - (C) After presentation of the evidence in support of their respective cases, the parties shall have the opportunity to introduce rebuttal evidence. Rebuttal evidence shall be introduced in the same order as was followed with respect to the introduction of evidence in support of the parties' respective cases;
 - (D) Each witness shall be examined first by the party calling the witness before cross-examination by the opposing party;
 - (E) After all evidence, including rebuttal evidence, has been presented, the parties shall have the opportunity to make a final argument. Final argument shall proceed as follows:
 - (i) The director's final argument;
 - (ii) Licensee's final argument;
 - (iii) The director's final argument in rebuttal which shall be limited to countering matters raised in licensee's final argument;
 - (F) The adjudication hearing shall be deemed closed after completion of all final arguments.
- (4) In the event of the licensee's failure to appear before the board to answer the charge(s) in any complaint and accusation after proper notice has been served upon the

licensee, or when the licensee or its representative leaves the hearing while the hearing is in progress, the board may proceed with such hearing without the presence of the licensee. Failure of the licensee or the licensee's representative to appear before the board after proper notice has been served, or when the licensee or its representative leaves while the hearing is in progress, shall constitute the licensee waiving its right to be entitled to be heard in person or through counsel and the waiving of the licensee's right to a full and fair opportunity to present any facts showing that the alleged cause or causes for the proposed action do not exist, or any reasons why no penalty should be imposed.

- (5) In the event of a witness' failure to appear before the board to testify as a witness after being subpoenaed, the board may continue the hearing and request a contempt of court citation be issued by the circuit court to compel such witness to appear before the board.

§08-102-93 Factors to be considered in imposing penalties.

The board, in determining the particular penalty to be imposed, shall consider:

- (1) The nature and circumstances of the offense and the history and characteristics of the licensee;
- (2) The need for the penalty imposed:
 - (A) To reflect the seriousness of the offense, to promote respect for the rules of the commission and to provide just punishment for the offense;

- (B) To afford adequate deterrence to further violations of the rules of the commission; and
- (C) To protect the public from further violations by the licensee.

§08-102-94 Findings of fact, conclusions of law, decision and order.

(a) Every decision and order adverse to a party to the proceeding rendered by the board in a contested case shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law as determined by the board. The department of the corporation counsel shall review the findings of fact, conclusions of law, decision and order to assure that the board's decision complies with chapter 92, HRS, and these rules.

(b) Findings of fact, conclusions of law, decision and order shall be signed by the board's chairperson or designee.

(c) The board shall issue, within a reasonable time, a written findings of fact, conclusions of law, decision and order to the licensee.

(d) Licensee shall pay any penalty imposed by the board at the office of the department within ten calendar days upon the receipt of the findings of fact, conclusions of law, decision and order.

(e) Unless stipulated by the board, whenever there is an assessment of a penalty of suspension of a liquor license for any violation of any liquor law or rules of the commission, the director shall select the days for suspension of license.

§08-102-95 Reconsideration of decision and order;
adjudication hearings.

(a) Any request or motion to reconsider a decision and order made by the board shall be filed with the board within fifteen calendar days from the date the decision and order was served. A request or motion to reconsider a decision and order may be granted by the board upon finding that:

- (1) There is newly discovered evidence;
- (2) The evidence was previously undiscovered even though due diligence was exercised;
- (3) The newly discovered evidence is admissible and credible; and
- (4) The evidence must be such a material and controlling nature as will probably change the outcome, and not the merely cumulative, or tending, only to impeach or contradict a witness.

(b) The filing of and the proceeding for reconsideration shall not stay the enforcement of the board's decision and order. Any order to stay the enforcement of the board's decision shall be by an order of the circuit court pursuant to section 91-14, HRS.

(c) Licensee shall pay any penalty imposed by the board at the office of the department within ten calendar days upon the receipt of the findings of fact, conclusions of law, decision and order.

§08-102-96 Surrender of license upon suspension,
revocation or closing of business.

Every licensee shall immediately surrender the license to the commission upon suspension or revocation thereof, or within five days after closing the business.

§08-102-97 Appeals; record.

(a) Any party aggrieved by the final decision and order of the board is entitled to judicial review in accordance with section 91-14, HRS.

(b) Any party requesting judicial review shall serve a copy of the request upon the board and all other parties in accordance with the Hawaii Rules of Civil Procedure.

(c) Unless the board has been notified in writing of a party's request for judicial review within the time permitted for requesting judicial review, the board, after the time for requesting judicial review has passed, may cause exhibits to be returned to the party introducing the exhibits or if the party does not wish their return, order the disposal or destruction of the exhibits.

(d) The department may dispose of or destroy any evidence seized unless notified in writing of a party's request for judicial review within the time permitted for requesting judicial review, and may return any exhibit seized as evidence after the time for requesting judicial review has passed or order its disposal or destruction if the party does not wish their return, the party cannot be contacted or when it is impractical or illegal to return such evidence to the party.

§08-102-98 Ex parte communications.

In any proceeding before the board:

- (1) No person, either in private or public life, shall communicate privately on the merits of any case with any board member or the board's staff unless specifically provided for by law.
- (2) No board member's staff or any other government agency who participates in the proceeding as a witness or counsel shall

communicate privately on the merits of any case with any board member unless specifically provided by law.

- (3) No board member shall communicate with any person or investigate privately on the merits of any application or case unless specifically provided by law.
- (4) If a board member has engaged in improper communication as specified herein, the board member must fully disclose the improper communication and afford the parties and board members the opportunity to rebut, present evidence and arguments to the improper communication.

§08-102-99 Disqualification of board member.

No board member shall participate in any discussion or vote on any matter in which the board member:

- (1) Has any direct or indirect financial interest that would prevent the board member from making an objective decision on the matter being heard;
- (2) Has participated in any investigation of the matter and has not fully disclosed the board member's investigation; or
- (3) Has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding which will prevent a fair hearing by the board.

§§08-102-100 to 109 (Reserved)